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informal or formal hearing. The written appeal should either refute or overcome the objections stated as a basis for disapproval. The Contract Proposal Declination Appeals Board shall consider such an appeal, conduct any requested hearing thereon, and recommend a decision to the Director, Indian Health Service, or his representative whose decision shall be final.

(b)(1) The tribal organization and the Indian tribe or tribes affected shall be notified, in writing, of the date, time, place, and purpose of the hearing. The hearing will be conducted within 30 calendar days of written request for a hearing or at such later time as may be agreed upon. The IHS will authorize payment of transportation costs and per diem to allow adequate representation of the applicant, if the meeting is more than 50 miles from the office of the applicant.

(2) The hearing may be held under such rules as may be agreed upon.

(c) If formal hearing is requested, it will be conducted within thirty (30) calendar days from receipt of the written request for a hearing or at such later time as may be agreed upon, and the notice of hearing shall specify in writing the date, time, place, and purpose of the hearing and shall afford the tribe or tribal organization the right:

(1) To written notice of the issues to be considered;

(2) To be represented by counsel;

(3) To written record of the hearing;

(4) To present and cross-examine witnesses;

(5) To file written statements prior to the hearing;

(6) To compel the appearance of Indian Health Service personnel or to take depositions of such persons at reasonable times and places.

(d) The decision of the Director, IHS, or his representative on the appeals will be rendered within 15 calendar days from the date of receipt by the Director of the IHS of the Board's recommendation.

(e) The Contract Proposal Declination Appeals Board shall be composed of 5 members appointed by the Director, Indian Health Service, one of whom shall be designated to serve as Chairman.

42 CFR Ch. I (10–1–99 Edition)

PROCUREMENT

§ 36.215 Applicability of regulations.

Contracts with tribal organizations resulting from the submission of Indian Self-Determination Contract Proposals as authorized in Pub. L. 93–638 shall be in accordance with chapters 1 and 3 of 41 CFR.

§ 36.216 Waivers.

(a) The Secretary may, for good cause shown, waive for the purposes of a specific contract any federal contracting laws and regulations which he determines are not appropriate for the purposes of the contract involved or are inconsistent with the Act.

(b) Requests for waivers may be initiated by tribal organizations or IHS contracting officers. Such requests will be forwarded to the Director, IHS for decision or further processing to the Secretary as required.

(c) A waiver request shall set forth clearly and precisely the following:

(1) The nature and basis of the needed waiver;

(2) Identification of the procurement regulation provision from which the waiver is needed;

(3) The circumstances under which the waiver would be used;

(4) The intended effect of the waiver;

(5) The length of time for which it can be anticipated that the waiver will be required;

(6) Reasons which will contribute to complete understanding and support of the requested waiver;

(7) Copies of pertinent background papers such as forms, contractor requests, etc.

(d) Whenever a waiver is requested by a tribal organization and such request is denied, the tribal organization will be notified of the reasons for denial.

§ 36.217 Fair and equal treatment of Indian people.

Contracts awarded to tribal organizations pursuant to the Indian Self-Determination Act shall incorporate the following clause:

The Contractor agrees, consistent with medical need, to make no discriminatory distinctions among Indian patients or beneficiaries of this contract. For the purpose of

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this contract discriminatory distinctions include but are not limited to the following:

(a) Denying a patient any service or benefit or availability of a facility;

(b) Providing any service or benefit to a patient which is different, or is provided in a different manner or at a different time from that provided to other patients under this contract; subjecting a patient to segregation or separate treatment in any manner related to his receipt of any service; restricting a patient in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service benefit; treating a patient differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility membership, or other requirements or condition which individuals must meet in order to be provided any service or benefit; the assignment of times or places for the provision of services on the basis of discriminatory distinctions which may be made of the patients to be served.

§ 36.218 Types of contracts.

Cost-reimbursement type contracts provide for payment to the contractor of allowable costs incurred in the performance of the contract, to the extent prescribed in the contract: This type of contract establishes an estimate of total cost for the purpose of obligation of funds, and a monetary ceiling which the contractor may not exceed. Except as provided below, cost reimbursement contracts will be used for all contracts made pursuant to this subpart. A negotiated cost reimbursement contract shall contain the terms set out in § 3-4.6013 of 41 CFR.

(a) Fixed-price contracts may be used in those instances where costs can be precisely established. A negotiated fixed-price contract shall contain the terms set out in § 3-4.6014 of 41 CFR.

(b) Cost sharing contracts may be used where the tribe contributes to the cost of a program and may specify a percentage of cost or fixed amount to be funded by the government.

§ 36.219 Term of contract.

(a) The term of contracts awarded under the Acts shall normally be for one year except that contracts may be made for a longer term up to three years subject to the availability of appropriations under the following circumstances:

(1) The services provided under the contract can reasonably be expected to

be continuing in nature and, as a result, a longer contract term would be advantageous.

(2) The Indian tribe or tribes to be served by the contract request that the term be more than one year. The tribal organization will indicate the desired term of the contract in the Self-Determination Contract Proposal.

(b) Contracts made for a term of more than one year may be renegotiated annually to reflect factors which include, but need not be limited to, cost increases beyond the control of the tribal contractor. Proposed changes in the services provided under the contract which reflect changes in program emphasis may be considered during the annual renegotiation if the changes fall within the general scope of the contract.

§ 36.220 Use of Indian business concerns.

Contracts awarded under authority of the Act shall incorporate the following clause, which is also set forth in 41 CFR 3-4.6013 and 3-4.6014.

(a) As used in this clause, the term "Indian business concern" means Indian organizations or an Indian-owned economic enterprise as defined in 42 CFR 36.204(i).

(b) The contractor agrees to give preference to qualified Indian business concerns in the awarding of any subcontracts entered into under the contract consistent with the efficient performance of the contract. The contractor shall comply with any preference requirements regarding Indian business concerns established by the tribe(s) receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(c) If no Indian business concerns are available under the conditions in paragraph (b) above, the contractor agrees to accomplish the maximum amount of subcontracting, as the contractor determines is consistent with its efficient performance of the contract, with small business concerns, labor surplus area concerns or minority business enterprises, the definitions for which are contained in subparts 1-1.7, 1-1.8, and 1-1.13 of the Federal Procurement Regulations. The contractor is not, however, required to establish a small business, labor surplus, or minority business subcontracting program as described in §§ 1-1.710-3(b), 1-1.805-3(b) and 1-1.1310-2(b), respectively of the Federal Procurement Regulations (41 CFR 1).